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injury has been caused to a person or property due to the culpability of the operator or to accident leaves the place of the injury or accident without giving his name, residence, and license number to the injured party or a police officer, shall be guilty of a felony. *Held*, the provision is constitutional. *People v. Rosenheimer* (N. Y.), 102 N. E. 530.

The statute was objected to as violating the constitutional provision that no person shall be compelled in any criminal case to be a witness against himself. Exemption from compulsory self-incrimination did not form part of the "law of the land" prior to the separation of the colonies from the mother-country, nor is it one of the fundamental rights, immunities, and privileges of citizens of the U. S., or an element of "due process of law," within the meaning of the Federal Constitution or the Fourteenth Amendment thereto. *Twining v. State of N. J.*, 211 U. S. 78; WIGMORE ON EVIDENCE, § 2250. Neither does the Fifth Amendment limit the powers of the State in respect to their own people, but operates only on the national government. *Spies v. Ill.*, 123 U. S. 131; *City of St. Joseph v. Levin*, 128 Mo. 588, 31 S. W. 101, 49 Am. St. Rep. 577; *People v. Wyatt*, 39 Misc. Rep. 456, 80 N. Y. Supp. 198. Therefore the only guaranty of this immunity is to be found in the state constitutions. This immunity, however, is a personal one and may be waived. *People v. Arnold*, 40 Mich. 710; *State v. Zdanowicz*, 69 N. J. Law 619, 55 Atl. 743.

It is settled that on account of the danger to life and other traffic on the public highway from the operation of automobiles therein the legislature may prohibit their use altogether. *State v. Mayo*, 106 Me. 62, 75 Atl. 259, 26 L. R. A. (N. S.) 502; *Com. v. Kingsbury*, 199 Mass. 542, 85 N. E. 848, 127 Am. St. Rep. 513. Being a privilege, the legislature may impose any condition it sees fit upon its exercise. *People v. Schneider*, 139 Mich. 673, 103 N. W. 172, 69 L. R. A. 345; *Ex parte Kneedler*, 243 Mo. 632, 147 S. W. 983, 40 L. R. A. (N. S.) 622. Hence as held in the principal case, the legislature has the right to require the waiver of this immunity as a condition precedent to the operation of motor vehicles on the public highway.

CONSTITUTIONAL LAW—ADMISSIBILITY OF EVIDENCE ILLEGALLY OBTAINED.—Where officers, without a warrant, took by force keys from the pockets of one charged with keeping liquor in his place of business, and unlocking the safe in his office, found whiskey, *held*, evidence thus procured is inadmissible, as compelling a person to incriminate himself in contravention of the constitutional provision against self-incrimination. *Underwood v. State* (Ga.), 78 S. E. 1103. See NOTES, p. 70.

COVENANTS AGAINST INCUMBRANCES—PHYSICAL CONDITIONS—BENEFICIAL EASEMENTS.—The defendant conveyed to B a certain lot traversed by a public sewer about six feet under ground, the existence of which was unknown to the vendee, but in use and still used by the public for forty years, the deed of conveyance covenanting generally that the premises were free from all incumbrances. The plaintiff, as assignor of B, sued for damages for breach of the covenant. *Held*, such a

sewer is not an incumbrance, since it is a benefit rather than a burden. *First Unitarian Society of Iowa v. Citizens Saving, etc., Iowa City* (Ia.), 142 N. W. 87.

There is great diversity of opinion on the question of whether or not a general covenant against incumbrances in a deed of real estate is broken by the existence upon the land of actual physical conditions, apparent and permanent and irremediable, the courts being about evenly divided. And many courts reach the same conclusion by entirely different lines of argument. Apparently it is settled that the existence of a private easement, such as a right of way, dam, etc., although known to the vendee, is a breach of covenant against incumbrances for which damages may be recovered, since, the easement being private, the vendee may presume that the vendor will remove it under his covenant, precisely as in the case of a pecuniary incumbrance. *Huyck v. Andrews*, 113 N. Y. 81, 20 N. E. 581, 10 Am. St. Rep. 432, 3 L. R. A. 789; *Perry v. Williamson* (Tenn.), 47 S. W. 189; *Russ v. Steele*, 40 Vt. 310. A public easement also, such as a highway, is held by many courts to constitute a breach of a general covenant against incumbrances, regardless of whether or not such easement was known by the vendee to exist; and the fact that the easement may really be beneficial to the vendee is held not to make it any the less an incumbrance, but merely to reduce the damages recoverable for the breach. *Copeland v. McAdory*, 100 Ala. 553, 13 So. 545; *Hubbard v. Norton*, 10 Conn. 422; *Beach v. Miller*, 51 Ill. 206, 2 Am. Rep. 290; *Quick v. Taylor*, 113 Ind. 540, 16 N. E. 588; *Kellogg v. Ingersoll*, 2 Mass. 97; *Kellogg v. Malin*, 50 Mo. 496, 11 Am. Rep. 426; *Haynie v. Am. Trust Inv. Co.* (Tenn.), 39 S. W. 860; *Butler v. Gale*, 27 Vt. 739; *Smith v. White* (W. Va.), 78 S. E. 378. Other courts, however, hold that where there is an irremediable public easement in the form of a physical condition known to both parties, there is no breach of covenant against incumbrances, since the parties must be presumed to have taken the easement into consideration in fixing the purchase price. Some courts reach the same holding by considering the public highway, etc., to be a benefit and hence no incumbrance. *Desvergers v. Willis*, 56 Ga. 515, 21 Am. Rep. 289; *Schurger v. Moorman*, 20 Idaho 97, 117 Pac. 122; *Stuhr v. Butterfield*, 151 Ia. 736, 130 N. W. 897; *Holmes v. Danforth*, 83 Me. 139, 21 Atl. 845; *Janes v. Jenkins*, 34 Md. 1; *Bacharach v. Von Eiff*, 74 Hun. 533, 26 N. Y. Supp. 842; *Ake v. Mason*, 101 Pa. St. 17; *Jordan v. Eve*, 31 Gratt. (Va.) 1; *Smith v. Hughes*, 50 Wis. 620, 7 N. W. 653. And in Virginia it has been held that such an irremediable public easement unknown to both parties at the time of the sale constitutes a breach of the covenant against incumbrances, since, being unknown, it could not possibly have been held in mind by the parties in fixing the purchase price. *Trice v. Kayton*, 84 Va. 217, 4 S. E. 377.

CRIMINAL CONVERSATION—DEFENSES—CONFLICT OF LAWS.—Plaintiff deserted his wife in New York. She moved to South Dakota and, after acquiring a domicile there, obtained a divorce from plaintiff, without either personal service upon him in that state, or appearance by him.